

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 29, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP724

Cir. Ct. No. 2012CV8864

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. RONALD L. COLLISON,

PETITIONER-APPELLANT,

v.

CITY OF WAUWATOSA BOARD OF REVIEW,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
KEVIN E. MARTENS, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Ronald L. Collison, *pro se*, petitions for certiorari review of the City of Wauwatosa Board of Review's decision assessing his property at \$59,000 for 2012. Collison argues: (1) that the Board's assessment is not supported by a reasonable view of the evidence; and (2) that the Wisconsin

Property Assessment Manual used by the assessor violates WIS. STAT. § 70.32(1m) (2011-12).¹ We affirm.

¶2 Collison brought this certiorari action to challenge the Board's decision affirming the assessment of his real property at \$59,000 in 2012, a reduction from the 2011 assessment of \$78,500. Collison has challenged assessments from prior years on largely the same grounds. The circuit court affirmed the Board's decision. Collison appeals.

¶3 On certiorari review, we review the Board's decision to determine whether the Board kept within its jurisdiction, whether it acted according to law, whether the Board's decision was arbitrary or unreasonable, and whether the Board might reasonably make the determination in question based on the evidence. *See Winkleman v. Town of Delafield*, 2000 WI App 254, ¶3, 239 Wis. 2d 542, 620 N.W.2d 438. We presume that the assessor's valuation is correct and we will not set that valuation aside unless there is evidence that shows that it was incorrect. *See Steenberg v. Town of Oakfield*, 167 Wis. 2d 566, 571, 482 N.W.2d 326 (1992). We review the decision of the Board, not the circuit court. *See id.*

¶4 Collison first contends the Board's decision is not based on a reasonable view of the evidence and that the Board did not consider the adverse evidence he presented. Real property should be valued at its "full value," or fair market value, for purposes of taxation. WIS. STAT. § 70.32(1). Fair market value is the amount property "will sell for upon arms-length negotiation in the open

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

market, between an owner willing but not obliged to sell, and a buyer willing but not obliged to buy.”” *Steenberg*, 167 Wis. 2d at 572 (one set of quotation marks and citation omitted). The assessor’s evaluation is presumed to be correct. WIS. STAT. § 70.47(8)(i). The objector has the burden of presenting evidence to show that the assessor’s valuation of the property was incorrect. *Id.*

¶5 Steve Miner, the City of Wauwatosa Assessor, testified that the property had a main building of approximately 4100 square feet, which had been recently damaged in a fire. To determine value, Miner analyzed sales of six comparable properties that had been used like this property as commercial dry cleaners or laundries, and developed a range of value. After making adjustments for various factors, Miner valued this property below the comparable sales. He also performed a cost approach and an income approach valuation. He testified that the property was identified as potentially contaminated due to its use for decades as a dry cleaner, which he took into consideration in setting the property’s value. Miner testified that he had no specific information to verify the existence and extent of the contamination because Collison did not conduct tests to determine whether the property was in fact contaminated and, if so, the extent of the contamination. Miner also testified that he was not aware of any reports on the property by government agencies or others that would shed more light on the situation, although he had asked the economic development director—apparently for the city—for any available information on the property.

¶6 Collison presented testimony from three witnesses in support of his argument that his land had a value of \$0. Two real estate brokers, Ed Krajcir and Roy Scholtka, testified that they considered the property unmarketable due to the potential environmental pollution on the property and they both said they would not list the property for sale for that reason. However, neither Krajcir nor Scholtka

offered an opinion about a specific dollar amount they thought the property was worth, although Scholtka said that he thought “a reasonable buyer who has other alternatives in the market wouldn’t pay anything for the property” given the lack of information about the existence and extent of environmental contamination.

¶7 Tom Anderson, a potential buyer, testified that he had been interested in purchasing the property, but decided against it because of the potential contamination. He further testified that, due to his experience with contaminated properties, he did not believe the property would have a market value until the contamination was remedied. However, Anderson did not offer an opinion about a specific dollar amount he thought the property was worth in its current condition.

¶8 After considering all of the testimony at a lengthy hearing, including the adverse evidence submitted by Collison, the Board upheld Miner’s evaluation of \$59,000, concluding that Collison had not met his burden of showing Miner’s assessment was incorrect. The Board reasoned that Miner followed the statutes and regulations in reaching his conclusions, which were based on the well-established methodology of using comparable sales. The Board noted that Miner took into account the potential contamination of the property but pointed out that Collison did not provide any *quantifiable* evidence showing the extent to which the property was contaminated and did not provide any evidence that would establish that the market value for the property is \$0. According to the Wisconsin Property Assessment Manual, of which Collison was well aware as noted below, “If a property owner believes a property is contaminated, evidence should be given to the assessor.” The Board also noted that Collison did not present an appraisal to support his claim that the assessor’s valuation of \$59,000 was

incorrect. The Board’s decision was based on a reasonable view of the evidence. Therefore, we uphold the Board’s decision.

¶9 Collison contends that the Wisconsin Property Assessment Manual, which all assessors are required by statute to use when valuing property, *see* WIS. STAT. § 70.32(1),² violates § 70.32(1m). The Manual provides:

Contaminated properties present a unique valuation problem for the assessor because of the difficulty in identifying contamination.... If a property owner believes a property is contaminated, evidence should be given to the assessor. Because of the special knowledge required to identify the type and extent of contamination and associated clean-up costs, the assessor should obtain copies of reports by government agencies and environmental engineers before estimating value.

In contrast, § 70.32(1m) provides, as relevant: “[T]he assessor shall consider the impairment of the value of the property because of the presence of a solid or hazardous waste disposal facility or because of environmental pollution.”

¶10 The gist of Collison’s argument is that WIS. STAT. § 70.32(1m) *requires* an assessor to consider environmental pollution in assessing property, but the Manual says that the assessor should make reductions to the value of assessed property only if the assessor is provided with quantifiable information regarding the amount of the contamination, either by the owner of the property or by a governmental agency.

² WISCONSIN STAT. § 70.32(1) provides: “Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual [prepared by the Department of Revenue as provided in § 72.03(2a)].” *See also Metropolitan Holding Co. v. Board of Review*, 173 Wis. 2d 626, 632, 495 N.W.2d 314 (1993).

¶11 WISCONSIN STAT. § 70.32(1m) and the Wisconsin Property Assessment Manual do not conflict. The statute requires that the assessor consider the impairment in value due to the presence of environmental pollution, which Miner said he did here; he took the potential contamination into account in valuing the property. The Manual provides more specific guidance to the assessor about how to objectively quantify environmental contamination. After noting that contaminated properties present unique valuation problems, the Manual provides that *if a property owner believes a property is contaminated*—which would lead to a lower assessment and a lower tax burden for the owner—*the property owner should give evidence to the assessor that documents the contamination*, or the assessor should get information about the contamination available from any governmental agencies. Here, Collison has chosen not to collect more detailed information about the property’s contamination because he does not want to be held responsible for remedying the problem, and Miner was unable to locate any information from governmental agencies, most likely because no information exists. Even so, it was *Collison’s* burden to establish the extent to which the contamination has impaired the value of his property if he does not agree with the assessor’s valuation.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

